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Q. And Damon Ben was eventually hired into that Ops Tech I position, right?

A. That's correct.

Q. And is he still employed with the City?

A. No, he is not.

Q. Do you know why he's not employed?

A. He failed the second attempt at his Ops Tech I test, written test.

Q. So did Damon Ben ever have the position title Ops Tech I?

A. No.

Q. And did you fire Ben?

A. Yes.

Q. And you fired him in accordance with the policy that says that you have two shots at passing that test; if you don't pass it you're not going to remain employed, right?

A. That's correct.

Q. And when we say "two shots and you're not going to remain employed unless you pass," we're talking about the Ops Tech I position, right?

A. In this case it was the Ops Tech I position, yes.

Q. Now, just with regards to that Ops Tech I position, I'm going to get back to it later but I've got

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it rattling around now. Did anyone else interview for that position that Ms. Garcia was hired into other than Ms. Garcia and Damon Ben?

A. We had certain Ops Tech I positions open at different times.

Q. Uh-huh.

A. But the one that Damon Ben was testing for was an open position that no one was interviewing for.

MR. MOZES: Could you read that last answer back, Jeannine?

(Requested portion was read.)

A. I can expound on that if you would like.

Q. (BY MR. MOZES) Yeah, if you would.

A. Okay. Usually what we try to do not just with Operations Technician jobs but throughout the electric utility is, for instance, we have an apprenticeship program on the line department side. Is that if we have someone who is fixing to what's currently referred to as "break out" or in the case of an operations trainee who is getting ready to test out and we have a position open, we will -- we will typically keep that position open so that that person can, if he's successful in testing out, assume that position.

It would be counter-productive for us to fill a position when someone is getting ready to test out

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of it and then have that person have to wait for an undetermined period of time before he can move into an open position.

And so we had an open position for Operator Technician I. My recollection is that we had one for Operations Technician I. And typically we would hold that open for the person who's getting ready to test out of it.

Now, if we don't have that position, the person who tests out then becomes eligible for the next one. And that happens at times, not -- it happens in the line department quite often. Someone -- it's time for them to break out and they test out and they are eligible to take the next journeyman level position that comes open without any kind of an interview process. So that's typically how we would do that.

Q. Or you could say, "Hey, listen. You know what? We don't have any qualified candidates for this open Ops Tech position so we're going to wait a while and repost it," right? You could do that too, right?

A. If we didn't have a qualified applicant or we didn't have someone who was getting ready to test out, we would definitely repost it.

Q. Okay. Okay. Let me hand you -- it's already been marked so I'm not going to remark it. It's

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the Ops Tech Trainee I position. Let me just hand that to you sir, so you can have a look at it while I'm asking you questions about it. Now, just with regards to that job description, did you write this job description?

A. I had a hand in writing this job description.

Q. Who else had a hand in writing it?

A. I don't remember if -- if it was Dale Dirk or if it was Richard Miller. Because it's right around the date I believe that we had that transition. But I believe for the most part if I had to -- I probably wrote most of this and their job would probably have been just to verify.

Q. And you will see it has a line there for Personnel review but nobody signed off on it. Do you know why that is?

A. No, I don't.

Q. Did you ever pass it by Personnel for review?

A. Yes.

Q. You're sure?

A. Well, they are -- this actually is in Personnel's job description file. So it was, you know, sent up there. I don't know why it wasn't signed. It may have been during the transition. I'm not sure.

6 (Pages 21 to 24)

PAUL BACA PROFESSIONAL COURT REPORTERS

EXHIBIT

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A. When we negotiated the current system with the union in 2008 it was clear to both parties that we wanted a three-year program. In fact, some of the language is built into the CBA. And that three-year program would include two years of an Operations Technician I, and one year as an Operations Technician II before that individual would be eligible to -- I'm sorry. Let me back up.

Operations Technician Trainee I, one year as an Operations Technician Trainee II before that person would be eligible to test for Operations Technician I. And so from the very beginning it was always a three-year program. It was meant to be a three-year program. And these job descriptions are meant to reflect that.

Q. Yeah. I have no doubt that that's true. I think that just looking at them, you know, I think that's a fair conclusion. But my question was, what was the purpose of requiring someone who has 20-plus years in the power plant to go through that three-year program? What was your thinking on that?

MS. OLMOS: Object to the form of the question.

A. The person was hired into that position. If the person was in that position in order to advance through the program they would have to meet the

requirements of that position. If they were qualified to get on any job within the City, whether it was an Operations Technician or any other job, they certainly could. But if they weren't qualified then they had to stay within this program until they were.

Q. (BY MR. MOZES) Okay.

THE REPORTER: May I have five minutes?

MS. OLMOS: I was going to ask too.

MR. MOZES: I don't pay attention to time.

Sure. Let's take five minutes.

(Break from 9:01 to 9:10.)

(Marked Sims Exhibit No. 1.)

Q. (BY MR. MOZES) We're back on the record Mr. Sims. Let me hand you what I've marked as Exhibit No. 1 to your deposition.

A. Okay.

Q. Now, what I've handed you as Exhibit No. 1 to your deposition of Ops Tech I job description for the City of Farmington; is that right?

A. This is a version of a job description. I'm not certain this is the most current version of the job description.

Q. Yeah, I'm not either. But the latest review date says 7/09, right?

A. Yes.

this stuff is done and then -- and then you get -- you're given opportunities to do it."

Absolutely. If I had information to the contrary that I believed was credible, I certainly would have done that.

Q. Yeah. Because see, with regards to that quote, your language of multiple witnesses, see my understanding was based your testimony, the only one you talked to about that was Richard Miller.

A. Well, but he told me, right?

Q. Right.

(Marked Sims Exhibit No. 8.)

Q. (BY MR. MOZES) Let me hand you what I'm going to mark as Exhibit No. 8.

A. Okay.

Q. I want to first look at No. 2, Paragraph No. 2 where it says, "Specific language in the Agreement prevents management from accelerating advancement for Operations Technician Trainee I position and could only be changed through Mutual Agreement which the City is not inclined to do in this instance." Now, I'm interested in knowing with regards to that sentence and the City not being inclined to accelerate advancement. Prior to October 7, 2010, had you talked to anybody about that?

A. Prior to --

Q. You writing this memo.

A. I don't recall if I had or not.

Q. So it's entirely possible that when you write here that the City is not inclined to do this in this instance, that that was your decision, right?

A. Yes. I'm speaking on behalf of the City. That was my decision.

Q. Correct. And you write, "The move to one-person crews at Animas Plant necessitated a change from the past practice of early promotion into a two-person crew." Can you explain that for me.

A. Yes.

Q. Okay.

A. Prior to moving to a one-man operation which we negotiated with the union in 2008, at Animas we had two-man operation crew. There was a Senior Operator who was the foreman as you would, of the crew. There was a Turbine Operator who was of a journeyman level, control operator, and then we had Utility Workers who were in essence the trainees.

Given a two-person operations crew, we had more leverage or more leeway in early promotion of someone into the journeyman level position because we always had someone, a more senior person, who could guide and direct that person.

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1 And so there were times when we had some
 2 what I would say exceptional Utility Workers who had
 3 advanced through the training to the point where we
 4 thought they could with some assistance occupy the
 5 Turbine Operator position, especially since there was a
 6 lead foreman-type position over them that could direct
 7 their activities, that we did do some acceleration at
 8 times.

9 We changed that when we decided to go to
 10 one-man operation, because we did not have that luxury
 11 anymore. We didn't have the luxury of someone being able
 12 to direct the activities of the person on shift since
 13 they would be tasked with operating the plant by
 14 themselves, all aspects of operating the plant, shutdown,
 15 startup, by themselves.

16 And we actually invested a lot of money into
 17 the plant to upgrade the plant so that that transition
 18 could happen. Spent almost a million dollars in upgrades
 19 at Animas plant to allow for that one-man operation. But
 20 prior to that we did have the luxury of some early
 21 accelerated promotion. We realized and that's why we
 22 negotiated the contract, the CBA that basically is still
 23 in effect associated with those parameters, for a one-man
 24 operation.

25 Q. Paragraph 1 he wrote, "The utility has

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1 scheduled diversity training for all generation personnel
 2 to reinforce the City's position regarding discrimination
 3 and harassment." Now, that was done in response to
 4 Ms. Garcia's claims, right?

5 A. That's correct.

6 Q. Now, do you know whether the mere act of
 7 conducting the diversity training in any way took care of
 8 the problems that Ms. Garcia had complained about with
 9 regards to discrimination and harassment?

10 A. I have no way of knowing whether there were
 11 problems -- actual problems.

12 Q. Well, didn't she continue to make complaints
 13 after diversity training took place?

14 A. I believe she did.

15 (Marked Sims Exhibit No. 9.)

16 Q. (BY MR. MOZES) Let me hand you what I'm
 17 going to mark as Exhibit No. 9 to your deposition.

18 MR. MOZES: When we're done with this
 19 exhibit we'll take a break.

20 MS. OLMOS: Okay.

21 Q. (BY MR. MOZES) Now, this is just kind of a
 22 grab bag of Miller memos to file that were provided to me
 23 by the City. They run from 2009 up through 2010. And
 24 they regard different issues that Mr. Miller annotated in
 25 these memos related to Ms. Garcia and complaints he had

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1 received.

2 A. Uh-huh.

3 Q. And at -- and let's just look at the second
 4 page. And of course, this is -- this is all in the
 5 context of, "Do we keep Ms. Garcia or do we get rid of
 6 her," right?

7 MS. OLMOS: Object to the form of the
 8 question.

9 A. I'm not sure what context Richard had in
 10 mind when he was putting this summary together.

11 Q. (BY MR. MOZES) Well, let's look at the
 12 context you gave it. It's on the first page. Right
 13 there in the middle of the page --

14 A. Right.

15 Q. -- 9/17/09. "Maude, it is time for Juanita
 16 Garcia's second quarterly probationary review. These are
 17 the comments I just received from Richard concerning
 18 Juanita. This is a tough one."

19 A. Uh-huh.

20 Q. And she then sets forth some of her
 21 concerns. I want to go back to the second page though.

22 A. Okay.

23 Q. Would you agree with -- how many years of
 24 supervisory experience do you have?

25 A. I can tell you exactly. From 1985 to 1989,

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1 so there's four.

2 Q. Uh-huh.

3 A. From 1999 until present day. That would be
 4 14. So 18 years.

5 Q. Okay. Now, in your 18 years of supervisory
 6 experience would you agree with me just because an
 7 employee or employees come and make critical or negative
 8 reports about another employee doesn't mean it's true,
 9 does it?

10 A. That's true.

11 Q. I mean, one of the duties and
 12 responsibilities of an adequate supervisor -- I'm not
 13 going to say good -- of an adequate supervisor is if they
 14 are receiving employee complaints about another employee
 15 in the workplace, that's something they need to run down
 16 to the ground, right?

17 A. Exactly.

18 Q. Now, if you will go to 254. It's this
 19 perfume issue that Lorena had talked about shortly
 20 yesterday. Do you agree with Mr. Miller's conclusion
 21 here right at the bottom that if, if Ms. Garcia continues
 22 to wear perfume and it's uncomfortable for anyone I'll
 23 call her into my office and tell her to stop wearing it?

24 A. Absolutely.

25 Q. And what would be the basis for you giving

20 (Pages 77 to 80)